

Market Ability, Inc.
9 Sunshine Blvd
Ormond Beach, FL 32174

RE: CG Docket No. 02-278 Preemption

Market Ability, Inc. is filing these comments in response to a request for comment disseminated by the Federal Communications Commission pursuant to 47 CFR §§ 1.415, 1.419. Market Ability, Inc. is a service provider that can broadcast thousands of prerecorded messages to residences and businesses around the country. We have been in business since 1992 and we have always endeavored to comply with all laws applicable to our services. Our dialers are programmatically restricted from placing any intrastate. Market Ability wishes to comment on the question before the FCC, does the FCC have exclusive rulemaking authority and jurisdiction over interstate telephone calls and does that authority preempt state law?

Market Ability, Inc. affirms those arguments propounded in the petition filed by ALLIANCE CONTACT SERVICES; AMERICALL GROUP, INC.; AMERICAN BANKERS ASSOCIATION; AMERICAN BREAST CANCER FOUNDATION; AMERICAN FINANCIAL SERVICES ASSOCIATION; AMERICAN RESORT DEVELOPMENT ASSOCIATION; AMERICAN TELESERVICES ASSOCIATION; AMERICA'S COMMUNITY BANKERS; ANSWERNET NETWORK; CANCER RECOVERY FOUNDATION OF AMERICA; CONNEXTIONS; DIRECT MARKETING ASSOCIATION; EFFECTIVE TELESERVICES, INC.; FREEEATS.COM, INC. D/B/A CCADVERTISING; HUMANE SOCIETY OF GREATER AKRON; INFOCISION MANAGEMENT CORP.; KIDS WISH NETWORK; MIRACLE FLIGHTS FOR KIDS; MULTIPLE SCLEROSIS ASSOCIATION OF AMERICA; NATIONAL CHILDREN'S CANCER SOCIETY; NATIONAL MULTIPLE SCLEROSIS SOCIETY; NOBLE SYSTEMS CORP.; NORTHWEST DIRECT MARKETING, INC.; NPS; OPTIMA DIRECT, INC.; PRECISION RESPONSE CORP.; SITEL CORP.; SOUNDBITE COMMUNICATIONS, INC.; SYNERGY SOLUTIONS, INC.; TELE-RESPONSE CENTER, INC.; TELETECH HOLDINGS, INC.; TPG TELEMAGEMENT, INC.; AND WEST BUSINESS SERVICES, LP. They are entirely correct in asserting that the FCC has exclusive regulatory jurisdiction over interstate telemarketing.

Currently, the existing state regulation of interstate telemarketing is overwhelming. Although the Commission has stated that the TCPA applies to both intrastate and interstate communications, since the assertion listed in the FCC's Report and Order regarding exclusive federal jurisdiction of interstate telemarketing, numerous states have enacted do-not-call rules that make no distinction between intrastate and interstate calling and these states are aggressively enforcing those laws against interstate telemarketers. They have

and will continue to attempt to do so until the FCC rules on the preemption question.

When Congress enacted the TCPA, it extended federal authority over telemarketing by amending section 2(b) to give the Commission jurisdiction over both interstate and intrastate calls. When Congress did so it was noted that states lack jurisdiction over interstate calls. The Commission's *Report and Order* regarding the TCPA was correct. The Commission noted that states have jurisdiction over INTRASTATE calls ONLY, while the Commission has jurisdiction over interstate calls. In a plain reading of the TCPA "nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive INTRASTATE requirements or regulations on, or which prohibits" the use of certain telemarketing practices. Section 227(e)(1) establishes that the states have no authority over interstate calls.

As in cases before, the Commission should conclude that state regulation of interstate telemarketing is inconsistent with, and in direct conflict with, the pro-competitive policy of preempting inconsistent state law. The Commission has the power to preempt state regulation of interstate telemarketing. Anything short of preemption will perpetuate an unworkable system of inconsistent state law.

Market Ability has, and always will, endeavor to comply with applicable laws. We believe that, relative to our services as a provider of interstate calls, only Federal law applies. It is costly and burdensome for small companies such as Market Ability to comply with the myriad of state laws when there is no consistent theme to these laws. As such, the FCC should state firmly that it has exclusive jurisdiction and that state laws are preempted by the TCPA.

Sincerely,

Mark S. Edwards
CEO
Market Ability, Inc.